THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26217 of 2005

09.12.2005

Between:

K.Vijaya, W/o.K.Venkataiah, APHB Colony, Karimnagar

..... Petitioner

AND

The AP Housing Board, Warangal

.....Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26217 of 2005

ORDER:

The petitioner was allotted a house bearing No.MIG-I/268 in A.P. Housing Board (APHB) Colony, Karimnagar. There is a vacant land in an extent of 134.16 Sq.yards adjacent to the petitioner's house. The respondent herein issued a tender-cum-auction notice dated 17.11.2005 inviting participation of people in the auction to sell away the said vacant land. The upset price was fixed at Rs.1,650/- per Sq.yard. Aggrieved by the same, the petitioner filed the present writ petition seeking a writ of Mandamus declaring the action of the respondent in fixing the upset price over and above the market value as illegal and arbitrary and for a consequential direction to the respondent to offer vacant land abutting plot No.69 adjacent to the petitioner's house at the rate of Rs.1050/- per Sq.yard.

The only submission made by the learned Counsel for the petitioner is that the land admeasuring 134.16 Sq.yards is actually two pieces and not one piece. Therefore, when the vacant land abutting an allotted house is less than 100 Sq.yards, APHB is bound to offer the vacant land to the adjacent house owner. Secondly, it is the submission that APHB cannot fix upset price in excess of market value.

Opposing the writ petition, the learned Standing Counsel for APHB, Sri D.Ranganath Kumar, placed strong reliance on G.O.Ms.No.38, dated 30.5.1997 and also an unreported decision of this Court in **Md.Abdul Kareem v Vice Chairman & Managing Director, Housing Commissioner, A.P. Housing Board** (W.P. No.19917 of 2002, dated 13.8.2003) in support of the contention that if the land is more than 100 Sq.yards, it has to be necessarily auctioned and the adjacent owner has no right to compel APHB to allot it to him. Learned Standing Counsel also refutes the contention of the petitioner regarding fixation of upset price.

A reading of G.O.Ms.No.38 (a copy of which is placed before this Court by the learned Standing Counsel) would show that the Government of Andhra Pradesh issued orders in G.O.Ms.No.20 dated 11.6.1984 prescribing the procedure in regard to disposal of lands by APHB situated in twin cities. It appears, the Vice chairman of APHB by letter dated 14.3.1997 sent certain proposals. Accepting the same, the Government in cancellation of the orders in G.O.Ms.No.20, issued G.O.Ms.No.38 dated 30.5.1997 laying down revised guidelines. These read as under.

1. Permission for sale of stray pieces of lands measuring 100.00 square yards and above.

Government hereby permit the A.P. Housing Board to sell stray pieces of lands measuring 100.00 square yards and above each, not required by the A.P. Housing Board, by public auction as laid down in the rules, subject to the condition that the A.P. Housing Board shall obtain "No Objection Certificate" from the concerned Municipal Corporations/Municipalities/ Local Bodies and Urban Development Authorities before auctioning such lands.

2. Permission for sale of stray pieces of land less than 100.00 square yards other than footpaths and roads to adjacent house owners on current market value.

Government hereby permit the A.P. Housing Board to sell stray pieces of land measuring less than 100.00 square yards each, other than footpaths and roads to the adjacent house owners on current market value, subject to the condition that "No Objection Certificate" is obtained from the concerned Municipal Corporations/Municipalities/Local Bodies without public auction in case of residential areas and in case of areas with commercial value of public auction.

A plain reading of the above guidelines would belie any contention that an allottee of a residential house of Housing Board gets right to claim vacant land adjacent to his house on preferential basis even if the extent of the land is more than 100 Sq.yards. Such a right is available only where the extent of land is less than 100 Sq.yards and also such vacant land is not required by APHB. Therefore, the petitioner cannot be said to have any grievance, if the Housing Board takes up action in accordance with G.O.Ms.No.38. Insofar as the other submission is concerned, no evidence is placed before this Court to show that upset price fixed by the respondent is in excess of the prevailing market value. Indeed "the prevailing market value" always depends on demand and supply as well as the location of the property having regard to the proximity of the road etc. Therefore, there can never be universally accepted prevailing market value in any developed area or developed colony. The submission is misconceived. Further, this Court on the judgment referred to herein above has considered the scope of G.O.Ms.No.38 and observed as under.

> It is to be further noted that the abutting landowners cannot claim the vacant land as a matter of right. The disposal or assignment of such vacant land is always subject to the discretion of the Housing Board and guidelines prescribed by the Government. As stated above, the interest of other individuals who do not own any piece of land and who may aspire to have some land, also has to be taken into account and the Government obviously in order to safeguard the interest of these people and to benefit them, have issued the G.O.Ms.No.38 permitting the Housing Board to sell the vacant lands more than 100 sq.yards by public auction. In the present case, since land vacant was found to be more than 100 sq.yards, the respondent –

Housing Board issued the public auction notice. Further the Apex Court as well as this Court have time and again held that such policy of the Government to dispose of the vacant land by public auction, cannot be challenged under the writ jurisdiction.

The writ petition is devoid of any merit and is, accordingly, dismissed. No costs.

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(**V.V.S.RAO, J**)

December 09, 2005.

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